



Mr Karel De Gucht
Commisisoner for Trade
European Commission
200 rue de la Loi
1049 Brussels

9 August 2012

Dear Commissioner De Gucht,

I would like to bring to your attention our serious concerns about a recent decision of the Indian Patent Controller to grant a compulsory license. This decision was based on the finding that the patented product was imported and not manufactured by the patentee or its licensee in India. Even though the specific case in India concerned a pharmaceutical product, the requirement for local manufacturing set forth in the order concerns many other industry sectors.

Granting a compulsory license on that ground goes against Article 27.1 of the Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreement. This Article is key to the international legal framework of patent protection and clearly prohibits discrimination as to whether products are imported or locally produced.

An essential element of the intellectual property system is that a level playing field and fair competition drive further innovation. This mechanism is undermined whenever non-market licenses are imposed on the rightholders. While compulsory licenses are recognised by international law, such licenses are permitted only under specific and strict conditions. They are very rarely necessary, given that market-based solutions can usually be found. Non-market solutions can actually reduce incentives to invest in new technologies and creative works.

Because of their market-distorting effects, compulsory licenses should be considered a highly disfavoured policy tool. In our view, the EU overall IP strategy should be based on the strong presumption that market-based licensing is preferable to compulsory licensing.

We would invite the European Commission to raise these concerns in its bilateral contacts with the Indian government. It would also be appropriate to address this issue in the context of the EU-India Free Trade Agreement (FTA) negotiations, which require a minimum adherence to TRIPs standards, including recognition that importation of a product satisfies the working requirement.



The aim of the EU in the FTA negotiations is to obtain expanded market access and a predictable legal framework for EU companies in India, in order to promote EU competitiveness and job creation. If this case is not challenged, it would set a negative precedent for other countries to follow. This would result in the undoing of an important achievement of TRIPs and an overall erosion of patent protection and legal certainty in emerging markets.

We thank you in advance for taking into account our concerns.

Yours sincerely,

très cordialement,

Philippe De Buck